

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GENERAL ELECTRIC COMPANY, §
Plaintiff, §

v. §

MITSUBISHI HEAVY INDUSTRIES, §
LTD. ET AL., §
Defendants. §

CIV. ACTION NO. 3:10-CV-276-F

FILED
MAR - 8 2012
CLERK, U.S. DISTRICT COURT
By R. J.
Deputy 5:16 p.m.

ORDER DENYING DEFENDANTS'
MOTION FOR JUDGMENT AS A MATTER OF LAW
THAT PLAINTIFF IS NOT ENTITLED TO LOST PROFITS

BEFORE THE COURT is Defendants Mitsubishi Heavy Industries, Ltd.'s and Mitsubishi Power Systems Americas, Inc.'s (collectively "Mitsubishi") Motion for Judgment as a Matter of Law that GE is Not Entitled to Lost Profit Damages, argued after Plaintiff General Electric ("GE") rested its case and filed on March 5, 2012 (Doc. No. 518). GE filed a Response the same day (Doc. No. 521). As ruled from the bench, Defendants' Motion is DENIED.¹

Mitsubishi argues that judgment as a matter of law that GE is not entitled to lost profit damages is appropriate because "GE has not established an adequate factual basis to allow the jury to award lost profit damages." Defs.' Mot., at 1. Mitsubishi argues that the testimony of GE's damages expert, Julie Davis, amounts to mere speculation that but for Mitsubishi's infringement, Iberdrola and EME would have purchased turbines from GE. Mitsubishi points to the following in support of its Motion: 1) Ms. Davis's testimony that she did not ask either of these companies what they would have done if

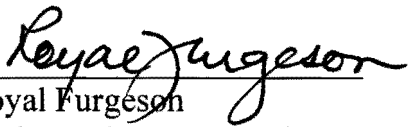
¹ This resolves Doc. No. 518.

they could not use the ZVRT system in Mitsubishi's turbines, 2) the fact that GE has presented no evidence tending to show that Mitsubishi would have opted to release its customers from their contracts rather than cure the infringement, and 3) the existence of noninfringing alternatives. In response, GE cites a series of documents and testimony it has offered at trial that tends to prove that GE would have made the sales but for Mitsubishi's infringement.

The Court finds that GE has presented sufficient evidence to establish that a question of fact remains as to whether the customers that bought Mitsubishi turbines would have bought them from GE but for Mitsubishi's infringement. Accordingly, Defendants' Motion for Judgment as a Matter of Law that GE is Not Entitled to Lost Profit Damages is DENIED.

IT IS SO ORDERED.

SIGNED this 6th day of March, 2012.



Royal Furgeson
Senior United States District Judge